IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4479 of 2000
with
Civil Application No.14781 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SULTAN IBRAHIM MANSURI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR AS SUPEHIA for Petitioner(s) : 1,
MR APURVA DAVE AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 19/12/2006

ORAL JUDGMENT

1. Heard the learned advocates appearing for the respective parties.

2. Today, Civil Application No.14781 of 2006 has been filed by the petitioner with a prayer to fix the matter for final hearing. Therefore, considering the fact that petitioner is aged about 71 years old and pensionary benefit is not paid to the petitioner by the respondents only on the ground that daily wager service has been excluded in calculating the qualifying service and, therefore, petitioner remained without pension. Therefore, on being request made by learned advocate, Mr.Supehia, with consent of learned AGP, Mr.Dave, main SCA No.4479 of 2000 is taken up for final hearing today.

3. Brief facts of the present petition are that the petitioner was working as work charge Kadia and retired on 31.1.1996 on attaining the age of superannuation. Thereafter, he applied for pension but, same has been refused on the ground that he had put in less than 10 years' service as a work charge employee and he has been paid

gratuity on the basis of service as work charge employee. The petitioner was engaged as a daily wager from 1973 and since 2nd February,1987, he was appointed as work charge employee. The request of the petitioner for pensionary benefit has been rejected by letter dated 5.10.1999 by the respondents, therefore, in the present petition, the petitioner has challenged the order dated 5.10.1999. Annexure-E, Page-17, is the letter dated 5.10.1999 where the request of petitioner for pensionary benefit and daily wage service has been rejected only on the ground that petitioner was not remained continued as work charge employee for more than 10 years as per Rule 41(2). The case of the petitioner has been recommended by the Deputy Executive Engineer, Baroda by letter dated 8.5.1997 that petitioner is entitled the benefit of pension while considering the service as a daily wager. However, this recommendation made by Deputy Executive Engineer, Baroda has not been considered by the respondents. Learned advocate,

Mr.Supehia, relied upon the decision of this Court in SCA No.2836 of 1998 dated 27.8.1998 and SCA No.788 of 2005 dated 14.12.2005. Affidavit-in-reply filed by the respondents raising the same contention that petitioner is not entitled the benefit of pension while considering the service rendered as daily wager. The respondents have relied upon the Service Rules.

4. I have considered the submissions made by both the learned advocates and also perused the record of the petition as well as the reply filed by respondents. The question is that the service rendered by petitioner as a daily wager from 1973 to 2.2.1987 are required to be considered as qualifying service for pensionary benefit or not, or only service rendered as a work charge employee shall have to be taken into account or not. These questions have been examined by this Court in SCA No.2836 of 1998 dated 27.8.1998. Relevant discussion is at page-23 and 24 which is quoted as under :

“The next question that arises for consideration is whether the period of work put in by the petitioner as a daily wager i.e. from 1979 till 1987 should be taken into consideration for the purpose of pensionary benefits. The petitioner has placed reliance on the Government Resolution dated 11-10-88. However, except making statement in the affidavit in reply that the Government has made clarification to the effect that ..."the working as and when required on daily rated basis and period spent during that period cannot be counted for pensionary benefits.." the deponent has not produced any other material to substantiate the said statement.

A Division Bench of this Court (Coram: Hon'ble C.J. and J.M.Panchal,J) in the case of Chhaganbhai Ranchhodbhai Rathod vs Dy Executive Engineer & ors, Letters Patent Appeal No. 1495 of 1997 decided on 6-8-98, after considering the resolution dated 17th October, 1988 in an identical situation has held that the appellant in that case who completed 240 days and was

continuously in service for a period of more than ten years as Rojamdar is entitled to the benefits of pension.

Mrs.Siddhi Talati, learned Assistant Government Pleader instructed by Mr. Hasurkar, learned Government Solicitor has, however, invited my attention to Rule 230 of the Bombay Civil Services Rules and submitted that since the petitioner was not holding substantive permanent post before 1987, he is not entitled to pensionary benefits. In her submission the services of Rojamdar are not required to be taken into consideration for the purposes of counting the period of service for pensionary and other benefits. In view of the decision of the Division Bench of this Court in Chhaganbhai Ranchhodbhai's case (supra) it is not possible to accept the submission of Mrs.Talati.In Tribhovanbhai Jerambhai vs Dy Executive Engineer, Sub-Division, R&B Deptt and another, 1998 (2) G.L.H. page 1, this Court, after considering Rule 230 of the BCSR has ruled that Rule 248 of the Bombay Civil Services Rules provides that Government may, by general or special order, permit service other than pensionable

service for performing which a government servant is paid from State revenue or from local fund to be treated as a duty counting for pension. In issuing such order the Government is to specify the method at which the amount of duty shall be calculated and may impose any condition which it thinks fit. Thus Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension. It is further ruled that in the resolution dated 17-10-1988, it has been envisaged that those workmen who, as on 1-10-1988 or thereafter completes ten years of continuous service to be counted in accordance with provisions of S.25B of the ID Act shall be deemed to be permanent. Under the resolution dated 17th October, 1988 his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularisation is taken into consideration for the purpose of computing pension or making pension available to such retired employee. In view of this, it is clear beyond any

> manner of doubt that the services of the petitioner as a daily rated employee, if not from the year 1960, at least from the year 1979, is required to be taken into consideration until, he retired for the purposes of computing pensionary benefits.
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> In the result, this petition is allowed. The respondents are directed to calculate the pensionary benefits payable to the petitioner within two months from today and to pay the arrears within one month thereafter. It is clarified that if the amount is not paid by the respondents within the time stipulated hereinabove, the same shall be paid to the petitioner with 12% from the date of expiry of one month of the calculation till the date of payment. Rule is made absolute accordingly with no order as to costs."

5. Recently also, this Court had an occasion to consider the identical question in SCA No.788 of 2005 dated 14.12.2005 wherein same question has been examined by this Court that work charge employee is entitled the pensionary benefit while taking into account the service rendered by such

employee as a daily wager. Relevant discussion is in Para.4 and 5, which is quoted as under :

> **"4.** The issue of counting the service as daily wage labourer for the purpose of pension is not *res-integra* and admittedly covered by several judgments of this Court including the Division Bench judgment dated 6.8.1998 in Letters Patent Appeal No. 1495 of 1997. Following that judgment, the Court has taken the view in Special Civil Application No. 2836 of 1998 that the service as daily rated employee was required to be taken into consideration in the case where the resolution dated 17.10.1988 was applicable. The learned AGP fairly conceded that the judgments referred hereinabove have not been carried in appeal and instructions of the Government annexed with the affidavit had been issued prior to those judgments. There is no dispute about the fact that the petitioner has been working under the respondents since 16.4.1971.
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> **5.** In the above facts and circumstances, the petition is required to be allowed and

> accordingly it is allowed. The respondents shall re-calculate the terminal benefits due to the petitioner on the basis of the service from 16.4.1971 and pay the amount of difference arising out of the said re-calculation within a period of three months with interest on such amount of difference at the rate of 9% from 1.6.2004 till the date of payment.”

6. The Allahabad High Court has in the decision reported in 2006 (111) FLR 98 (Allahabad High Court) also considered the question of entitlement of pension while keeping in mind the length of service / qualifying service which included daily wager service. The chowkidar appointed on 23.3.1962 and regularized on 13.11.1998. The service from 1962 to 1997 is considered to be qualified service for pensionary service.

7. Apart from this, looking to the grievance made in GR dated 17.10.1988 which gives certain benefits to the daily wager, who has completed

five years' service / 10 years' service / 15 years' service and 20 years' service. The service rendered by daily wager within a meaning of Section 25B of the I.D.Act,1947 has been considered continuous for all the benefits including pensionary benefits. Therefore, daily wager, who rendered the service for more than 10 years' service continuously within a meaning of Section 25B, entitled the pensionary benefits. Therefore, looking to the aforesaid GR dated 17.10.1988, the service rendered by present petitioner from 1973 to 1987 as a daily wager must have to be counted for the purpose of pensionary benefits which has not been counted by respondents and denied the benefit by letter dated 5.10.1999 to the petitioner. Therefore, in view of these facts, the decision taken by respondent – Pension & Provident Fund Office, in letter dated 5.10.1999 is contrary to the said law laid down by this Court including the GR dated 17.10.1988, therefore, same is required to be set aside.

8. In the result, the order dated 5.10.1999 is hereby quashed and set aside with a direction to the respondents to consider the continuous service including daily wage service from 1973 till retirement, 31.1.1996 being continuous service for pensionary benefits. Accordingly, the respondents are directed to calculate the pensionary benefits which are legally available in favour of petitioner and pay the pensionary benefits to the petitioner w.e.f. 1.2.1996 till December,2006 with all arrears, within a period of three months from the date of receiving the copy of this order and to pay the pensionary benefits regularly to the petitioner in accordance with Law, Rules and Regulations till he entitled the pensionary benefit without any delay.

9. If the respondents will not make any payment of pensionary benefits as per directions issued by this Court, then, the respondents shall have

to pay the interest @ 10% on such amount which will have to be paid to the petitioner by the respondents. Accordingly, rule is made absolute.

10. In view of the order passed in SCA No.4479 of 2000, Civil Application No.14781 of 2006 does not survive. Accordingly, Civil Application No.14781 of 2006 stands disposed of.

(H.K.RATHOD,J.)

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